



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

August 31, 1965

Honorable Ed Keys
County Attorney
Ward County Courthouse
Monahans, Texas

Opinion No. C-497

**Re: Under what circumstances
may a justice of the peace
be paid more than is pro-
vided in Article 53.07(d)
of Senate Bill No. 107,
Acts 59th Legislature, 1965?**

Dear Mr. Keys:

**In your letter requesting an opinion from this office
you submit certain facts which we quote as follows:**

**"The referenced Article of the new Code
of Criminal Procedure (Article 53.07(d)) limits
the amount which can be paid to a Justice of
the Peace as salary 'not to exceed the maximum
amount of fees which they were entitled by law
to retain before the effective date of this
code.'"**

**With regard to these facts you ask the following
question:**

**"Under what circumstances, if any, can
a Justice of the Peace be paid more than pro-
vided by this sub-section d? . . ."**

**Senate Bill 107, Acts 59th Legislature, Regular
Session, 1965, is known as the "Code of Criminal Procedure."
The new Code becomes effective January 1, 1966.**

**The provisions of the Code of Criminal Procedure of
1965, most pertinent to our discussion, are quoted as follows:**

"Art. 53.07 Justice of Peace Salary

**"(a) Every justice of the peace in the
State of Texas shall be compensated by salary,**

the amount of which shall be determined by the commissioners court.

". . .

"(d) All justices of the peace compensated on a fee basis before the effective date of this Code shall receive a salary to be determined by the commissioners court of each county, not to exceed the maximum amount of fees which they were entitled by law to retain before the effective date of this Code."

You assume by your question that the provisions of Article 53.07(a) and 53.07(d), requiring that every justice of the peace in the State of Texas shall be compensated by salary, are valid. However, Section 61 of Article XVI of the Texas Constitution provides in part as follows:

". . .In all counties in this State, the Commissioners Courts shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis, with the exception that it shall be mandatory upon the Commissioners Courts, to compensate all constables, deputy constables and precinct law enforcement officers on a salary basis beginning January 1, 1949; . . ."

The foregoing constitutional amendment was adopted by the voters of Texas at the General Election in November, 1948, and subsequent thereto on December 21, 1948, an Attorney General's Opinion No. V-748 construed the provisions of the foregoing as follows:

"H.J.R. 36 of the 50th Legislature, amending Article XVI of Section 61 of the Texas Constitution, placing sheriffs and constables on a salary basis, is self-executing to the extent that said officers shall be compensated on a salary basis beginning January 1, 1949.

"The Justices of the Peace, County Judges, County Attorneys and District Clerks are not 'law enforcement officers' within the meaning of Article XVI, Sec. 61 of the State Constitution."

Under the language of Section 61 of Article XVI of the Texas Constitution and the holding in the above-quoted

opinion, it is within the sole discretion of the Commissioners Court to determine whether the justices of the peace shall be compensated on a fee or salary basis. Attorney General's Opinion V-1317 (1951). Consequently, it is our opinion that Article 53.07(a) and Article 53.07(d) so far as each makes mandatory the compensation by salary for each justice of the peace in this State, are in conflict with the constitutional provision quoted above and each is therefore void.

S U M M A R Y

Both Article 53.07(a) and Article 53.07(d) Senate Bill 107, Acts 59th Legislature, Regular Session, 1965, so far as each makes mandatory the compensation by salary for every justice of the peace in this State, are in conflict with Section 61, Article XVI of the Texas Constitution and each is therefore void. However, this constitutional provision makes it mandatory that all Constables and Deputy Constables be compensated on a salary basis.

Very truly yours,

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APPROVED:
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